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The Honorable Richard A. Jones
The Honorable J. Richard Creatura

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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EL PAPEL, LLC, et al.,

Plaintiffs,

v.

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ROBERT W. FERGUSON, in his official capacity as Attorney General of the State of Washington; JENNY A. DURKAN, in her official capacity as the Mayor of the City of Seattle; and THE CITY OF SEATTLE, a municipal Corporation,

Defendants.

NO. 2:20-cv-01323-RAJ-JRC

DEFENDANT ROBERT W. FERGUSON'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND AFFIRMATIVE DEFENSES

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I. GENERAL DENIALS

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Defendant Robert W. Ferguson, in his official capacity as Attorney General of the State of Washington, by and through his attorneys, Assistant Attorneys General Zachary Pekelis Jones and Brian H. Rowe, and Deputy Solicitor General Jeffrey T. Even, hereby answers Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief (Complaint), Dkt. 81. Except as herein expressly admitted or qualified, Defendant Ferguson denies each and every allegation, statement, or charge contained in the Complaint, and denies that Plaintiffs are entitled to any of the relief requested.

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The coronavirus disease 2019 (COVID-19) pandemic is an unprecedented state, national, and international emergency that requires an unprecedented governmental response to protect public health. The emergency orders issued by the Governor of Washington, like similar orders

1 issued by numerous national, state, regional, and local governments around the world, currently
2 represent the best mechanism to mitigate the spread of COVID-19. Specifically,
3 Proclamation 20-19 (including its amendatory proclamations) is a lawful exercise of the
4 Governor's emergency powers that infringes none of Plaintiffs' constitutional rights.

5 Defendant Ferguson responds to the numbered allegations in the Complaint as follows:

6 **II. ANSWER**

7 **INTRODUCTION**

8 1. Defendant Ferguson admits that the COVID-19 pandemic struck the United
9 States in early 2020 and that Governor Jay Inslee issued Proclamation 20-05 on February 29,
10 2020, declaring a State of Emergency in Washington State. Defendant Ferguson is without
11 information sufficient to form a belief as to the truth of the remaining factual allegations in
12 Paragraph 1, and therefore denies the same. To the extent further response is required, it is
13 denied.

14 2. Defendant Ferguson admits that on March 18, 2020, Governor Inslee issued
15 Proclamation 20-19, temporarily prohibiting certain residential evictions in Washington.
16 Defendant Ferguson denies Paragraph 2's characterization of the purpose and effect of
17 Proclamation 20-19, and refers to the text of Proclamation 20-19, which speaks for itself.
18 Paragraph 2 asserts legal conclusions and argument to which no response is required. Defendant
19 Ferguson is without information sufficient to form a belief as to the truth of the remaining factual
20 allegations in Paragraph 2, and therefore denies the same. To the extent further response is
21 required, it is denied.

22 3. Paragraph 3 asserts legal conclusions to which no response is required. Defendant
23 Ferguson is without information sufficient to form a belief as to the truth of the factual allegations
24 in Paragraph 3, and therefore denies the same. To the extent a response is required, it is denied.

25 4. Paragraph 4 asserts legal conclusions to which no response is required. To the
26 extent a response is required, it is denied.

1 5. Paragraph 5 asserts legal conclusions to which no response is required. To the
2 extent a response is required, it is denied.

JURISDICTION AND VENUE

4 6. Paragraph 6 asserts legal conclusions to which no response is required. To the
5 extent a response is required, Paragraph 6 is denied.

6 7. Paragraph 7 asserts legal conclusions to which no response is required. To the
7 extent a response is required, Paragraph 7 is denied.

8 8. Paragraph 8 asserts legal conclusions to which no response is required. Defendant
9 Ferguson is without information sufficient to form a belief as to the truth of the remaining factual
10 allegations in Paragraph 8, and therefore denies the same. To the extent a further response is
11 required, Paragraph 8 is denied.

12 9. Defendant Ferguson admits that venue is proper in this judicial district. Defendant
13 Ferguson is without information sufficient to form a belief as to the factual allegations in
14 Paragraph 9, and therefore denies the same. To the extent a further a response is required, it is
15 denied.

PARTIES

Plaintiffs

18 10. Defendant Ferguson is without information sufficient to form a belief as to the
19 truth of the allegations in Paragraph 10, and therefore denies the same.

Defendants

11. Defendant Ferguson admits that he is the Attorney General of the State of
Washington and that he is being sued in his official capacity. The remaining allegations in
Paragraph 11 are legal conclusions to which no response is required. To the extent a further
response is required, it is denied.

25 12. Defendant Ferguson admits that Jenny A. Durkan is the Mayor of the City of
26 Seattle and that she is being sued in her official capacity. The remaining allegations in

Paragraph 12 are legal conclusions to which no response is required. To the extent a further response is required, it is denied.

3 || 13. Admitted.

4 14. Paragraph 14 asserts legal conclusions to which no response is required.
5 Defendant Ferguson is without information sufficient to form a belief as to the truth of the factual
6 allegations in the last sentence of Paragraph 14, and therefore denies the same. To the extent
7 Paragraph 14 incorporates by reference allegations in other paragraphs of the Complaint,
8 Defendant Ferguson incorporates by reference his responses to those paragraphs. To the extent
9 a further response is required, Paragraph 14 is denied.

GENERAL ALLEGATIONS

11 15. Paragraph 15 asserts legal conclusions to which no response is required. To the
12 extent a response is required, Paragraph 15 is denied.

13 16. Paragraph 16 asserts legal conclusions to which no response is required.
14 Defendant Ferguson admits that the quoted language appears in Proclamation 20-19.3, which
15 speaks for itself. To the extent a further response is required, Paragraph 16 is denied.

16 17. Paragraph 17 asserts legal conclusions to which no response is required. To the
17 extent a response is required, Paragraph 17 is denied.

18. Paragraph 18 asserts legal conclusions to which no response is required. To the
19 extent a response is required, Paragraph 17 is denied.

19. Defendant Ferguson admits that Proclamation 20-19 was issued on March 18,
2020, and that it has been extended through subsequent amendments. Defendant Ferguson denies
that “[c]urrently, the moratorium is in effect until October 15, 2020.” Under Proclamation 20-
19.5 (issued December 31, 2020), the moratorium is currently set to expire on March 31, 2021.
To the extent a further response is required, Paragraph 19 is denied.

25 20. Paragraph 20 asserts legal conclusions to which no response is required. To the
26 extent a response is required, Paragraph 20 is denied.

1 21. Paragraph 21 asserts legal conclusions to which no response is required. To the
2 extent a response is required, Paragraph 21 is denied.

3 22. Paragraph 22 asserts legal conclusions to which no response is required. To the
4 extent a response is required, Paragraph 22 is denied.

5 23. Paragraph 23 asserts legal conclusions to which no response is required. To the
6 extent a response is required, Paragraph 23 is denied.

7 24. Paragraph 24 asserts legal conclusions to which no response is required. To the
8 extent paragraph 24 incorporates by reference other paragraphs in the Complaint, Defendant
9 Ferguson incorporates by reference his responses to those paragraphs. To the extent a further
10 response is required, Paragraph 24 is denied.

11 25. Paragraph 25 asserts legal conclusions to which no response is required.
12 Defendant Ferguson admits that the quoted language appears in Exhibit H (Seattle
13 Ordinance 126075). Seattle Ordinance 126075 speaks for itself and requires no response by way
14 of factual pleading. To the extent a response is required, Defendant Ferguson denies any further
15 allegations in Paragraph 25.

16 26. Paragraph 26 asserts legal conclusions to which no response is required.
17 Defendant Ferguson admits that the quoted language appears in Exhibit H (Seattle
18 Ordinance 126075). Seattle Ordinance 126075 speaks for itself and requires no response by way
19 of factual pleading. To the extent a response is required, Defendant Ferguson denies any further
20 allegations in Paragraph 26.

21 27. Paragraph 27 asserts legal conclusions to which no response is required. To the
22 extent a response is required, Paragraph 27 is denied.

23 28. Paragraph 28 asserts legal conclusions to which no response is required. To the
24 extent a response is required, Paragraph 28 is denied.

25 29. Paragraph 29 asserts legal conclusions to which no response is required. To the
26 extent a response is required, Paragraph 29 is denied.

1 30. Paragraph 30 asserts legal conclusions to which no response is required. To the
2 extent a response is required, Paragraph 30 is denied.

3 31. Paragraph 31 asserts legal conclusions to which no response is required. To the
4 extent a response is required, Paragraph 31 is denied.

5 32. Defendant Ferguson is without information sufficient to form a belief as to the
6 truth of the allegations in Paragraph 32, and therefore denies the same.

7 33. Defendant Ferguson is without information sufficient to form a belief as to the
8 truth of the allegations in Paragraph 33, and therefore denies the same.

9 34. Defendant Ferguson denies that the rental property in question “is currently
10 occupied by two holdover tenants whose lease expired on July 31.” Defendant Ferguson is
11 without information sufficient to form a belief as to the truth of the remaining allegations in
12 Paragraph 34, and therefore denies the same.

13 35. Denied.

14 36. Defendant Ferguson is without information sufficient to form a belief as to the
15 truth of the allegations in Paragraph 36, and therefore denies the same.

16 37. Defendant Ferguson is without information sufficient to form a belief as to the
17 truth of the allegations in Paragraph 37, and therefore denies the same.

18 38. Defendant Ferguson is without information sufficient to form a belief as to the
19 truth of the allegations in Paragraph 38, and therefore denies the same.

20 39. Defendant Ferguson is without information sufficient to form a belief as to the
21 truth of the allegations in Paragraph 39, and therefore denies the same.

22 40. Defendant Ferguson is without information sufficient to form a belief as to the
23 truth of the allegations in Paragraph 40, and therefore denies the same.

24 41. Defendant Ferguson is without information sufficient to form a belief as to the
25 truth of the allegations in Paragraph 41, and therefore denies the same.

1 42. Defendant Ferguson is without information sufficient to form a belief as to the
2 truth of the allegations in Paragraph 42, and therefore denies the same.

3 43. Defendant Ferguson is without information sufficient to form a belief as to the
4 truth of the allegations in Paragraph 43, and therefore denies the same.

5 44. Defendant Ferguson is without information sufficient to form a belief as to the
6 truth of the allegations in Paragraph 44, and therefore denies the same.

7 45. Defendant Ferguson is without information sufficient to form a belief as to the
8 truth of the allegations in Paragraph 45, and therefore denies the same.

9 46. Defendant Ferguson is without information sufficient to form a belief as to the
10 truth of the allegations in Paragraph 46, and therefore denies the same.

11 47. Defendant Ferguson is without information sufficient to form a belief as to the
12 truth of the allegations in Paragraph 47, and therefore denies the same.

13 48. Defendant Ferguson is without information sufficient to form a belief as to the
14 truth of the allegations in Paragraph 48, and therefore denies the same.

15 49. Defendant Ferguson is without information sufficient to form a belief as to the
16 truth of the allegations in Paragraph 49, and therefore denies the same.

17 50. Defendant Ferguson is without information sufficient to form a belief as to the
18 truth of the allegations in Paragraph 50, and therefore denies the same.

19 51. Paragraph 51 asserts legal conclusions to which no response is required. To the
20 extent a response is required, Paragraph 51 is denied.

21 52. Paragraph 52 asserts legal conclusions to which no response is required. To the
22 extent a response is required, Paragraph 52 is denied.

23 53. Defendant Ferguson is without information sufficient to form a belief as to the
24 truth of the allegations in Paragraph 53, and therefore denies the same.

INJUNCTIVE RELIEF ALLEGATIONS

54. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.

55. Paragraph 55 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 55 is denied.

56. Paragraph 56 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 56 is denied.

57. Paragraph 57 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 57 is denied.

58. Paragraph 58 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 58 is denied.

DECLARATORY RELIEF ALLEGATIONS

59. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.

60. Paragraph 60 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 60 is denied.

61. Paragraph 61 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 61 is denied.

62. Paragraph 62 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 62 is denied.

**FIRST CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – CITY OF
SEATTLE’S CITY COUNCIL’S EVICTIONS BAN’S UNCONSTITUTIONAL
IMPAIRMENT OF CONTRACT**

63. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.

1 64. Defendant Ferguson admits that the language quoted in the first sentence of
2 paragraph 64 appears in Article I, Section 10, Clause 1 of the United States Constitution, though
3 the capitalization of certain words is incorrect. The last sentence of Paragraph 64 asserts legal
4 conclusions to which no response is required. To the extent a further response is required,
5 Paragraph 64 is denied.

6 65. Paragraph 65 asserts legal conclusions to which no response is required. To the
7 extent a response is required, Paragraph 65 is denied.

8 66. Paragraph 66 asserts legal conclusions to which no response is required. To the
9 extent a response is required, Paragraph 66 is denied.

10 67. Defendant Ferguson incorporates by reference his responses to Paragraphs 24–
11 27. Paragraph 67 asserts legal conclusions to which no response is required. To the extent a
12 response is required, Paragraph 67 is denied.

13 68. Paragraph 68 asserts legal conclusions to which no response is required. To the
14 extent a response is required, Paragraph 68 is denied.

15 69. Paragraph 69 asserts legal conclusions to which no response is required. To the
16 extent a response is required, Paragraph 69 is denied.

17 70. Paragraph 70 asserts legal conclusions to which no response is required. To the
18 extent a response is required, Paragraph 70 is denied.

19 71. Paragraph 71 asserts legal conclusions to which no response is required. To the
20 extent a response is required, Paragraph 71 is denied.

21 **SECOND CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – CITY OF**
22 **SEATTLE’S SIXTY COUNCIL’S REPAYMENT ORDINANCE’S**
23 **UNCONSTITUTIONAL IMPAIRMENT OF A CONTRACT**

24 72. Defendant Ferguson incorporates by reference his responses to the preceding
25 paragraphs.
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73. Paragraph 73 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 73 is denied.

74. Paragraph 74 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 74 is denied.

75. Paragraph 75 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 75 is denied.

76. Paragraph 76 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 76 is denied.

77. Paragraph 77 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 77 is denied.

**THIRD CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – CITY OF
SEATTLE’S CITY COUNCIL’S UNCONSTITUTIONAL TAKING OF THE
PLAINTIFFS’ RENTAL PROPERTIES**

78. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.

79. Defendant Ferguson admits that the language in the first sentence of Paragraph 79 appears in the Fifth Amendment to the United States Constitution. The United States Constitution speaks for itself and requires no response by way of factual pleading, and on that basis, Defendant Ferguson denies any further allegations in Paragraph 79.

80. Paragraph 80 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 80 is denied.

81. Paragraph 81 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 81 is denied.

82. Paragraph 82 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 82 is denied.

1 83. Paragraph 83 asserts legal conclusions to which no response is required. To the
2 extent a response is required, Paragraph 83 is denied.

3 84. Paragraph 84 asserts legal conclusions to which no response is required. To the
4 extent a response is required, Paragraph 84 is denied.

5 85. Paragraph 85 asserts legal conclusions to which no response is required. To the
6 extent a response is required, Paragraph 85 is denied.

7 **FOURTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – MAYOR OF**
8 **SEATTLE’S EVICTION BAN’S UNCONSTITUTIONAL IMPAIRMENT OF A**
9 **CONTRACT**

10 86. Defendant Ferguson incorporates by reference his responses to the preceding
11 paragraphs.

12 87. Paragraph 87 asserts legal conclusions to which no response is required. To the
13 extent a response is required, Paragraph 87 is denied.

14 88. Paragraph 88 asserts legal conclusions to which no response is required. To the
15 extent a response is required, Paragraph 88 is denied.

16 89. Paragraph 89 asserts legal conclusions to which no response is required. To the
17 extent a response is required, Paragraph 89 is denied.

18 90. Paragraph 90 asserts legal conclusions to which no response is required. To the
19 extent a response is required, Paragraph 90 is denied.

20 91. Paragraph 91 asserts legal conclusions to which no response is required. To the
21 extent a response is required, Paragraph 91 is denied.

22 **FIFTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – MAYOR OF**
23 **SEATTLE’S EVICTION BAN’S UNCONSTITUTIONAL TAKING OF THE**
24 **PLAINTIFFS’ RENTAL PROPERTIES**

25 92. Defendant Ferguson incorporates by reference his responses to the preceding
26 paragraphs.

93. Paragraph 93 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 93 is denied.

94. Paragraph 94 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 94 is denied.

95. Paragraph 95 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 95 is denied.

SIXTH CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF – WASHINGTON STATE’S EVICTION BAN’S UNCONSTITUTIONAL IMPAIRMENT OF A CONTRACT

96. Defendant Ferguson incorporates by reference his responses to the preceding paragraphs.

97. Paragraph 97 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 97 is denied.

98. Paragraph 98 asserts legal conclusions to which no response is required. To the extent a response is required, Paragraph 98 is denied.

99. Denied.

100. Denied.

101. Denied.

SEVENTH CLAIM FOR DECLARATORY RELIEF – TAKING OF PROPERTY

102. Defendant Ferguson incorporates by reference his response to the preceding paragraphs.

103. Denied

104. Denied.

105. Denied.

PRAYER FOR RELIEF

Paragraphs 1 through 10 assert Plaintiffs' requested relief to which no response is required. To the extent a response is required, Defendant Ferguson denies that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

III. AFFIRMATIVE DEFENSES

Defendant Ferguson's affirmative defenses to the Complaint are set forth below. By setting forth the following defenses, Defendant Ferguson does not assume burden of proof on any matter or issue other than those on which he has the burden of proof as a matter of law. Defendant Ferguson reserves the right to supplement these defenses.

1. The Eleventh Amendment bars Plaintiffs' claims against Defendant Ferguson.
 2. Defendant Ferguson is entitled to qualified immunity.
 3. Plaintiffs have failed to exhaust administrative remedies.
 4. Plaintiffs lack standing.
 5. Plaintiffs' claims are moot.
 6. Plaintiffs' claims are unripe.
 7. This case is non-justiciable.
 8. This Court lacks subject matter jurisdiction.
 9. Plaintiffs have failed to state a claim upon which relief may be granted.
 10. Plaintiffs have failed to join necessary parties.
 11. Abstention doctrines warrant a stay or dismissal of the case.
 12. The challenged Proclamations have a real and substantial relation to the COVID-19 health crisis and are not a plain, palpable invasion of Plaintiffs' rights.

1 13. The Proclamations are narrowly tailored to advance a compelling governmental
2 interest.

3 14. The Proclamations reasonably and appropriately further the legitimate and
4 significant goal of combatting the COVID-19 pandemic.

5 15. The Proclamations are authorized and appropriate uses of the State's police power
6 to protect public health and welfare.

7 16. The Proclamations are authorized and appropriate uses of the emergency powers of
8 the Governor.

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10 **IV. DEFENDANT FERGUSON'S REQUEST FOR RELIEF**

11 Wherefore, Defendant Ferguson prays that the Court:

- 12 1. Dismiss Plaintiffs' Complaint for Declaratory and Injunctive Relief with prejudice;
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14 2. Deny all relief that Plaintiffs request;
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16 3. Grant Defendant Ferguson his costs and reasonable attorney fees; and
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18 4. Grant Defendant Ferguson such other and further relief as the Court may deem just
and proper.

DATED this 27th day of January, 2021.

ROBERT W. FERGUSON
Attorney General

/s/ *Brian H. Rowe*
BRIAN H. ROWE, WSBA No. 56817
ZACHARY PEKELIS JONES, WSBA No. 44557
Assistant Attorneys General
Complex Litigation Division
JEFFREY T. EVEN, WSBA No. 20367
Deputy Solicitor General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 332-7089
(206) 389-3888

1 (360) 586-0728
2 brian.rowe@atg.wa.gov
3 zach.jones@atg.wa.gov
4 jeffrey.even@atg.wa.gov
5 *Attorneys for Defendant Robert W. Ferguson*

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1 **DECLARATION OF SERVICE**

2 I hereby declare that on this day I caused the foregoing document to be electronically
3 filed with the Clerk of the Court using the Court's CM/ECF System which will send notification
4 of such filing to all counsel of record.

5 DATED this 27th day of January 2021, at Seattle, Washington.

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7 _____
8 /s/ *Brian H. Rowe*
BRIAN H. ROWE, WSBA No. 56817
Assistant Attorney General

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